VEERIAH PUNNUSAMY

v.

LEE YAP

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NO. 1249/1985]
29 JUNE 1988

TORT: *Negligence - Whether employer/defendant negligent in failing to provide safe system of work - Quantum of damages payable to the injured plaintiff.*

The plaintiff's evidence was that on the day of the accident there were several lorries at the forest site waiting to be loaded with logs and that there was only one forklift available for the job. After the logs had been loaded and were ready to be secured by the chain, a few logs slipped and fell onto the ground from his lorry and thereafter when he had climbed up the lorry and removed a wedge which he was instructed to do by the forklift driver, a log fell onto his leg and caused the injuries suffered by him.

The main issue to be decided was whether the employer/defendant was negligent in failing to provide a safe system of work and the quantum of damages payable to the plaintiff.

Held:

[1] To allow the plaintiff to manually dislodge a wedge which was already holding logs in place amounted to failure on the part of the defendant to provide a safe system of work and as such the defendant is found fully liable.

[2] That damages would be awarded to the defendant as follows:

(i) General damages for pain and suffering at RM50,000 at 8% interest from the date of service of the writ;

(ii) Special damages for medical reports and travelling expenses amounting to RM320 at 4% interest from the date of the accident;

(iii) Pretrial full loss of earnings amounting to RM12,000 with interest at the rate of 4% from the date of the accident;

(iv) Pretrial partial loss of earnings at RM15,840 with interest at the rate of 4% from the date of the accident;

(iv) Post trial loss of earnings amounting to RM40,770 with no interest;

(v) Cost of future artificial limbs at RM12,000 with no interest.

[Defendant negligent & fully liable.]

For the plaintiff - Kartar Singh; M/s. Bachan & Kartar
For the defendant - P. Rajendran; M/s. R.K. Nathan & Partners

JUDGMENT

LC Vohrah J:

The issue for determination is whether the defendant/employer was negligent in failing to provide a safe system of work.

I have considered the evidence of the lorry driver and the forklift driver and I accept the evidence of the plaintiff that on the day in question there were several lorries at the forest site waiting to be loaded with logs and that there was only one forklift having to do the loading of all these lorries. I also accept his evidence that after the logs had been loaded and were ready to be secured by the chain a few logs slipped and fell on to the ground from his lorry and thereafter when he had climbed up the lorry and removed a wedge, as directed by the forklift driver, a log fell on to his leg causing him the injuries he suffered.

Having regard to the fact that only one forklift was provided to load so many lorries, all of which were waiting to be loaded to that time, the forklift driver must have been under great pressure and, I think, it is reasonable to assume that some of the logs would not have been properly laid out in the plaintiff's lorry so that even though the plaintiff tacitly agreed to remove the wedge alone as directed by the forklift driver, the defendant must be held vicariously liable for the negligence of the forklift driver in not having laid out the logs properly in the first place thus necessitating the removal of the wedge for rearrangement. Although it was the plaintiff's responsibility (in his capacity as attendant) to put in the wedges, I think the lorry driver was under a duty to assist the plaintiff in removing the wedge when the plaintiff was directed by the forklift driver so to do as this was a task which was inherently too dangerous for any single individual to undertake and I find that to allow the plaintiff to manually dislodge a wedge which was already holding logs in place amounted to failure on the part to the defendant to provide a safe system of work in the circumstances. I accordingly find the defendant fully liable.

I need now only deal with the actual pre-trial loss and the future loss of earnings to be awarded to the plaintiff.

I accept the evidence of the clerk who currently has the custody of the defendant's ledger that the plaintiff's monthly salary was RM320 per month. I also find that, in addition, the plaintiff received an extra sum for each trip he performed with the lorry driver when the lorry driver was given his "tea-money" after, presumably, safe delivery of the logs at the sawmill. However, in my view, the figure of RM350 to RM400 given by the plaintiff as his extra income per week is somewhat exaggerated. Having regard to what the forklift driver and the lorry driver said they received in the way of extra payments over and above their salaries each month, I would estimate the plaintiff's extra income at RM180 per month bringing his total income to RM500 per month. I think the period of 2 years after the accident suggested by Mr. Rajendran as the period when the plaintiff would not have been able to earn any income at all is fair and reasonable in respect of pre-trial loss and on the basis I award as his actual loss of earnings the sum of RM12,000 which will bear interest at the rate of 4% per annum from the date of the accident. Thereafter, I am of the view that he would have been earning some income and I would estimate his partial loss of earnings as RM400 per month until the date of trial, a period of 3 years or 36 months, and on this basis I award the plaintiff the sum of RM15,840 which will bear interest at the rate of 4% per annum from the date of the accident.

Having regard to his present age of 41, I would say he has a working life of another 14 years and, taking into account contingencies, I would allow a multiplier of 10 years for the multiplicand of RM440 and the amount arrived at is RM40,770. This sum will bear no interest.

In addition the plaintiff is awarded the amounts agreed to as follows:

1) General damages for pain and suffering at RM50,000 at 8% interest from the date of the service of the writ;

2) Special damages for medical reports and travelling expenses amounting to RM320 at 4% interest from the date of the accident; and

3) Cost of future artificial limbs at RM12,000 with no interest.

Also found at [1989] 1 CLJ 73